

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 756

Short Title: Spectral Fluorescence Signature Drug Analysis. (Public)

Sponsors: Representatives Hamilton, McComas, Faircloth, and Jordan (Primary Sponsors).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary Subcommittee B, if favorable, Finance.

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE RESULTS OF A SPECTRAL FLUORESCENCE SIGNATURE ANALYSIS WITH REGARD AS TO WHETHER A SUBSTANCE IS A DRUG ARE ADMISSIBLE AS EVIDENCE IN COURT, TO REQUIRE A PERMIT TO CONDUCT A SPECTRAL FLUORESCENCE SIGNATURE ANALYSIS, AND TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ESTABLISH AND ADMINISTER A PERMIT PROGRAM FOR THE PRACTICE OF SPECTRAL FLUORESCENCE SIGNATURE ANALYSIS.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 5 of Chapter 90 of the General Statutes is amended by adding a new section to read:

**"§ 90-95.8. Spectral Fluorescence Signature Analysis.**

(a) Spectral Fluorescence Signature Analysis. – In any prosecution under Article 5 of Chapter 90 of the General Statutes, the results of a Spectral Fluorescence Signature Analysis that meets the criteria set out in this section are admissible as evidence in court for the prosecution of any violation under Article 5 of this Chapter to identify a disputed substance as one of the following controlled substances: heroin as defined in G.S. 90-89(2)j.; MDMA as defined in G.S. 90-89(3)c.; cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative, or preparation thereof that is chemically equivalent or identical with any of these substances, as defined in G.S. 90-90(1)d.; methamphetamine as defined in G.S. 90-90(3)c.; and marijuana as defined in G.S. 90-94(1).

(b) Criteria for Admissibility. – The results of a Spectral Fluorescence Signature Analysis are admissible as evidence in court under this Article only if the analysis meets both of the following requirements:

(1) It is performed in accordance with the rules of the Department of Health and Human Services.

(2) The person performing the analysis had, at the time of the analysis, a current permit issued by the Department of Health and Human Services authorizing the person to perform a Spectral Fluorescence Signature Analysis using the type of instrument employed.

(c) Inadmissibility of Analysis Results. – The results of a Spectral Fluorescence Signature Analysis of a disputed substance alleged to be a controlled substance performed in accordance with this section are not admissible as evidence if:



- 1           (1)    The defendant objects to the introduction into evidence of the results of the
- 2                    Spectral Fluorescence Signature Analysis of a disputed substance chemical
- 3                    analysis of the alleged controlled substance; and
- 4           (2)    The defendant demonstrates that, with respect to the instrument used to
- 5                    analyze the alleged controlled substance, preventive maintenance procedures
- 6                    required by the regulations of the Department of Health and Human Services
- 7                    had not been performed within the time limits prescribed by those
- 8                    regulations.
- 9       (d)    Judicial Notice. – The court shall take judicial notice of all of the following:
- 10           (1)    The rules of the Department of Health and Human Services.
- 11           (2)    The list of permits issued to the person performing the analysis, the type of
- 12                    instrument on which the person is authorized to perform tests of controlled
- 13                    substances, and the date the permit was issued.
- 14           (3)    The preventive maintenance records of the Department of Health and
- 15                    Human Services.
- 16           (4)    Whether at the time of the Spectral Fluorescence Signature Analysis, the
- 17                    Spectral Fluorescence Signature analyst possessed a permit authorizing the
- 18                    Spectral Fluorescence Signature analyst to perform the Spectral
- 19                    Fluorescence Signature Analysis administered.
- 20           (5)    Whether preventive maintenance had been performed on the Spectral
- 21                    Fluorescence Signature Analysis instrument in accordance with the rules of
- 22                    the Department of Health and Human Services.
- 23       (e)    No Restriction on Other Types of Analyses. – This section does not limit the
- 24            introduction of other competent evidence to identify these substances, including other chemical
- 25            tests."

26           **SECTION 2.** Chapter 90 of the General Statutes is amended by adding a new  
 27 Article to read:

28    "Article 42.

29    "Spectral Fluorescence Signature Analysis.

30       **"§ 90-640. Permit required.**

31       A person shall not conduct Spectral Fluorescence Signature Analyses without first applying  
 32       for and receiving a permit to engage in the practice from the Department of Health and Human  
 33       Services.

34       **"§ 90-641. Department of Health and Human Services establish permit program;**  
 35       **preventive maintenance.**

36       (a)    Permit Program Established. – The Department of Health and Human Services shall  
 37       establish a permit program that establishes the qualifications required for an individual to  
 38       conduct Spectral Fluorescence Signature Analyses and the acceptable methods for conducting  
 39       Spectral Fluorescence Signature Analysis. The Department may charge an applicant under this  
 40       Article a fee for reviewing the application to determine if the applicant meets the requirements  
 41       for obtaining the permit. The fee shall not exceed one hundred dollars (\$100.00) and shall be  
 42       submitted with the application for the permit. Fees collected under this Article are receipts of  
 43       the Department and shall be applied to the cost of administering the program. The Department  
 44       shall issue permits to conduct Spectral Fluorescence Signature Analyses to individuals it finds  
 45       qualified subject to periodic renewal, termination, and revocation of the permit in the  
 46       Department's discretion.

47       (b)    Preventive Maintenance. – Subject to review and approval by the Department of  
 48       Health and Human Services, any State or local law enforcement agency or group of law  
 49       enforcement agencies may contract with the vendor of any approved Spectral Fluorescence  
 50       Signature Analysis instrument to perform preventive maintenance on instruments used for  
 51       Spectral Fluorescence Signature Analysis. Such preventive maintenance shall be carried out in

1 a manner set forth and within the time limits prescribed by the Department of Health and  
2 Human Services. Any vendor who performs preventive maintenance shall provide a record of  
3 all such preventive maintenance to the Department of Health and Human Services, which shall  
4 maintain the same.

5 (c) Public List of Permittees. – The Department of Health and Human Services shall  
6 post on a Web page a list of all persons who have a permit authorizing them to perform  
7 Spectral Fluorescence Signature Analyses, the instruments that each person is authorized to  
8 operate, the effective dates of the permits, and the records of preventive maintenance."

9 **SECTION 3.** This act becomes effective October 1, 2011.